IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10661 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NANUBHAI RAMABHAI & 1 - Petitioner(s)
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance :
MR DHIRENDRA MEHTA for Petitioner(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 15/01/2007

ORAL JUDGMENT

1. Heard Mr.Dhirendra Mehta, learned counsel for the petitioners and Mr.L.R. Pujari, learned Assistant Government Pleader for State.

2. The petitioners - land holders were issued notices for filing his Return under the provisions of Gujarat Agricultural Land Ceiling Act, 1960 (“the Act” for short), they accordingly filed the Return. On 14/8/1978, the Mamlatdar and Agricultural Lands Tribunal, (Ceiling), (“the ALT” for short) held that the petitioners did not possess any land in excess of the ceiling limit, he, accordingly, dropped the proceedings.
3. The Deputy Collector, in appeal filed by the State, remanded the matter vide his order dtd.1/8/1983 to the Mamlatdar and ALT with certain directions including a direction to obtain a fresh Canal certificate and that authorised representative of the State be heard.
4. It appears that the Mamlatdar and ALT did not call for a fresh Canal certificate, but, however, after giving an opportunity to the parties and taking into consideration old Canal certificate, vide his order dtd.11/11/1986 again held that the petitioners were not possessed of land in excess of the ceiling limit, he, accordingly, dropped the proceedings.
5. The Deputy Collector (Land Reforms), Surat, took up the matter in suo-motu revision under sec.37 of the Act but without notice to the parties, vide his order dtd.24/4/1987

held that the order passed by the Mamlatdar and ALT did not call for any interference.

6. It appears that without hearing the parties to the matter, the Deputy Collector passed the order on 28/4/1987 and held that the order passed by the Mamlatdar did not call for any interference.

7. It appears that against the original order dtd.11/11/1986, State had preferred an appeal which was registered as Ceiling Appeal No.4 of 1991, but the same came to be dismissed by the Deputy Collector vide order dtd.18/7/1981. Against the said order, the State preferred a Revision before the Gujarat Revenue Tribunal, which, after taking into consideration the totality of the circumstances, held that the order passed by the Mamlatdar and ALT and confirmed by the Deputy Collector could not be maintained, because, the earlier order of remand was not observed by the Mamlatdar and ALT. The Gujarat Revenue Tribunal also held that the dismissal of the suo-motu revision on 28/4/1987 was not to affect the merits of the matter, because, that was a matter where the parties were not heard and the said order could be taken to be an administrative order.

8. Being aggrieved by the order dtd.24/12/1993 passed by

the Gujarat Revenue Tribunal in Revision Application No.TEN/B.S./153 of 1993, the petitioners – land holders are before this Court.

9. Mr.Mehta, learned counsel for the petitioners submits that once order dtd.11/11/1986 was confirmed in the proceedings under sec.37 of the Act by the Deputy Collector holding that no interference was called for, the State was not entitled to file an appeal and in any case, the State was required to challenge the order dtd.28/4/1987. He submits that the Gujarat Revenue Tribunal could not interfere in the matter.

10. On the other hand, Mr.L.R. Pujari, learned Assistant Government Pleader for the State Government submits that sec.37 of the Act does not give an absolute authority to the Deputy Collector to confirm an order without hearing the parties. He submits that the Mamlatdar and ALT did not observe the first remand order and when this was brought to the notice of the Gujarat Revenue Tribunal, the Gujarat Revenue Tribunal rightly interfered in the matter.

11. Sec.37 of the Act provides that the Collector either suo-motu or on a reference made by the State Government, can take up any matter in revision within a period of one

year of the passing of the order. It further provides that, in case, the Collector is of the opinion that the order calls for an interference, then, it has to hear the parties.

12. Mr. Mehta, learned counsel for the petitioners submits that hearing would be needed to be given in a case where the records are called for after one year and the authority proposes to interfere in the matter.

13. In the opinion of this Court, the argument advanced by Mr.Mehta is misconceived. If the argument is accepted as it is, it is likely to create absolute judicial / administrative anarchism. In a given case, for the reasons best known to the Collector / Deputy Collector, exercising the powers of the Collector, Officer may confirm the order if within the period provided for filing an appeal, an appeal is not filed. Confirmation of such an order though may not be taken to be an administrative order, but it cannot be allowed to play mischief with the rights of the parties who have a right to challenge the first order by filing an appeal even beyond the period of limitation. The order passed under sec.37 of the Act certainly could bind the State Government, if the State was heard and the objection raised by the State were rejected. In such a case, State would be called upon to file a revision before

the Gujarat Revenue Tribunal challenging the order passed under sec.37 of the Act. In the present case, the Deputy Collector for the reasons best known to him, I will repeat, did not issue notice to the State and held that no interference was called for. Such an order would simply show a prima facie satisfaction recorded by the said Deputy Collector / revisional authority, but would not bind the party which had a right to challenge it, because such party could always convince the revisional authority that if a notice was issued to it, it could always show that the order called for an interference. The appeal filed by the State Government certainly was maintainable irrespective of the rejection of suo-motu revision on 28/4/1987 and the Tribunal was justified in interfering in the matter, when it recorded a finding of fact that the Mamlatdar and ALT did not observe the first remand order by calling for a fresh Canal certificate, which, otherwise, had a material bearing on the subject matter.

14. It is also to be noted that if I, in exercise of my powers under Article 226 or 227, quash the order passed by the Gujarat Revenue Tribunal, a legal order would not come into being but yet another illegal order passed by the Mamlatdar and ALT, would stare in the eyes of the Court,

because the said order, according to the findings of the Gujarat Revenue Tribunal, is an invalid order.

15. For the reasons aforesaid, I refuse to interfere in the matter. The petition is dismissed. Rule is discharged. Interim relief is vacated. No costs.

(R.S. GARG, J.)

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